IN THE BOMBAY HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.303 OF 2003

Surajmukhi Securities Ltd. ... Petitioners.

vs.

M/s.Shilpa Shares & Securities. ... Respondent.

Mr.Ajay Khandhar, for Petitioners.

Mr.M.D.Angal, for Respondents.

ARBITRATION PETITION NO.95 OF 2003

Shilpa Shares and Securities. ... Petitioner.

vs.

Mr.D.K.Agrawal, M.D.,
M/s.Surajmukhi Securities Ltd.
And others. .... Respondents.

Mr.M.D.Angal, for Petitioner.

Mr.Ajay Khandhar, for Respondents.

CORAM: D.K.DESHMUKH,J.

DATED: 15th March, 2005.

P.C.:-

1. Both these petitions challenge the same Award made by the Arbitral Tribunal of the National Stock Exchange. By that Award, the Arbitral Tribunal has directed M/s.Surajmukhi Securities Ltd. to pay certain amounts to M/s.Shilpa Shares and Securities. For the purpose of this order, M/s.Surajmukhi Securities Ltd. is described as the Petitioners and M/s.Shilpa Shares and Securities is described as the Respondent. The facts that are relevant for the purpose of deciding these petitions are that the petitioners are the clients of the Respondent and had entered into the securities transactions on the National Stock Exchange, through the Respondent who is a stock broker. According to the Respondent, the transactions were dated 12.2.1996 and 13.2.1996. In so far as the transactions dated 13.2.1996 are concerned, according to the respondent, the petitioners had sold certain shares through him on the

Stock Exchange. 19.2.1996 was the pay in date. On that date the petitioners did not deliver the shares, therefore auction was held on 22.2.1996. On 22.10.1996, the Respondent made a reference to the Stock Exchange for referring the dispute to the Arbitrator. The Arbitral Tribunal of the Stock Exchange made the Award dated 4.6.1997. The Arbitral Tribunal has rejected the reference. That Award was challenged by the Respondent by filing Arbitration Petition no.28 of 1998. That petition was decided by order dated 22nd March,2000 by this Court holding that the proceedings were not in accordance with the law and set aside the Award. The Court in paragraph 5 of the order has observed thus:-

> "The Petitioner is at liberty, if in law, he is so entitled to apply a fresh to the National Stock Exchange for arbitration as the Award of the Arbitrator has been set aside for the reasons set out earlier."

A fresh reference was made on 28th June,2001. Pursuant to that reference, the Arbitral Tribunal was constituted. After holding the hearing, the Arbitral Tribunal has made the Award dated 8th June,2002, which is impugned in these petitions.

2. The petitioners have filed the Arbitration Petition no.303 of 2003 and the Respondent has filed the Arbitration Petition no.95 of 2003, challenging the said Award. The learned Counsel for the petitioners submits that the Award is liable to be set aside because the reference made by the respondent was hopelessly barred by law of limitation. He pointed out that the period of limitation is governed by the provisions of bye-laws no.3 under Chapter XI of Bye-laws of National Stock Exchange. It provides that a reference to be made within a period of six months from the date on which the claim, difference or dispute arose, but the time taken in conciliation proceedings is required to be excluded. He submits that therefore, the objection was raised before the Arbitrator that even if the date of judgment of this Court i.e. 22.3.2000 is taken as the date of the dispute between the parties, the reference should have been made within a period of six months from 22.3.2000. However, the reference has been made on 28.6.2001 and therefore, the reference is barred by the law of limitation. The learned Counsel submits that the Arbitral Tribunal totally misconstrued this objection and rejected it by holding that the parties were holding talks for settlement and therefore the period for talks of

settlement is liable to be excluded. The learned Counsel submits that the provision of excluding the time is only in relation to conciliation proceedings, and there is no provision in the bye-laws for exclusion of time taken in settlement proceedings.

3. The learned counsel for the respondent on the other hand submits that because the Award has been set aside by this Court by order dated 22nd March,2000, the earlier reference is revived and therefore, there is no question of fresh reference being made within six months from 22nd March,2000.

4. In order to decide this objection, firstly, it is necessary to refer to the provisions of bye-laws 3 of Chapter XI of National Stock Exchange, which reads as under:-

> "(3) All claims, differences or disputes referred to in Bye laws (1), (1A) and (1B) above shall be submitted to arbitration within six months from the date on which the claim, difference or dispute arose or shall be deemed to have arisen. The time taken in conciliation proceedings, if any, initiated and conducted as

per the provisions of the Act and the time taken by the Relevant Authority to administratively resolve the claim, differences or disputes shall be excluded for the purpose of determining the period of six months."

It is clear that the period of limitation is Six months from the date on which the dispute arose. In this case, the auction of the shares was held on 22.2.1996, and therefore, a reference will have to be made within six months from that date. Even if all that is forgotten and even assuming that the Judgment of this Court dated 22.3.2000 gives a fresh cause of action, then a reference will have to be made within a period of six months from 22.3.2000. The submission of the learned counsel for respondent is that the moment Award is set aside, the earlier reference would revive, has no substance. Sub-section (3) of Section 32 of the Arbitration and Conciliation Act,1996 in term lays down that subject to section 33 and sub-section(4) of Section 34, the mandate of the Arbitral Tribunal shall terminate with the termination of the arbitral proceedings. The termination of the arbitral proceedings is brought about by Arbitral tribunal making an Award. The legislature in framing

1996's Act has chosen to delete the provision contained in 1940's Act for remand of the proceedings. There is no question of revival of the earlier reference when the Award is set aside. By setting aside of the Award, the mandate of the Arbitral Tribunal does not get revived. It is because of this position of law that this Court in the order dated 22nd March,2000, provided that the Respondent may make a fresh reference to the National Stock Exchange. Even according to the respondent, the reference to Arbitral Tribunal made after the judgment of the Court, was a fresh reference.

5. So far as the aspect of exclusion of time is concerned, the observations in the Award reads as under:-

> "Although more than 6 months have elapsed from the date of receipt of the order of the High Court it is clear that the discussion for settlement and various legal proceedings continued which ultimately resulted into breakdown of the settlement on 7th June,2001. Hence, the time of 6 months should be counted from 7th June,2001 and the arbitration Application dated 28th June,2001 is within the period of 6 months from the 7th June,2001."

It is clear from the above observations that the Tribunal has excluded the time which was taken in the discussion for settlement and various legal proceedings. Perusal of bye-laws 3 quoted above shows that the exclusion of time can be claimed only in relation to the time taken in conciliation proceedings. Chapter XI in terms refers to the Arbitration and Conciliation, Act,1996, the provisions of Conciliation is to be found in part III of the Act which provides for Conciliation proceedings. Section 62 of the Act shows that the initiation of a conciliation proceedings is by a written invitation to conciliate and the other party accepting the invitation for conciliation. Then there are elaborate provisions made for appointment of conciliators and holding of conciliation proceedings. It is nobody's case that the conciliation proceedings within the meaning of the Act were held between the parties. It is thus, clear that there was no question of excluding any time which was taken for talks of settlement and various legal proceedings. The reason given by the Arbitral Tribunal for excluding the time taken for talks of settlement is perverse to say the least. The Award made by the Arbitral tribunal is therefore, liable to be set aside. In the result therefore, the Arbitration Petition no.95

of 2003 fails and is dismissed. The Arbitration Petition no.303 of 2003 succeeds and is allowed, and that petition is granted in terms of prayer clause (a).

The Respondent is also directed to pay costs of both these petitions to the petitioners as incurred by the petitioners.

15.3.2005 ---